THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.29050 OF 1997

ORAL ORDER:

The 1st petitioner herein claims title and possession in respect of Ac.2.13 cents of land situated in Pydipaka village, which was purchased by his father from one Meduri somanna under a registered sale deed dated 11.5.1942. The petitioner Nos. 2 to 5 herein are the legal representatives of the 1st petitioner, who died during the pendency of this writ petition.

It is not in dispute that Ac.2.13 cents of land in possession of the petitioners forms part of an estate which was taken over by the Government on 7.9.1949 under the provisions of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (for short, "Estates Abolition Act").

It is claimed that the 1st petitioner was in occupation of the land in question on the notified date i.e., 7.9.1949 and continued in occupation thereafter.

It is to be noted that Pydipaka village is a notified scheduled area and, therefore, after the A.P. (Scheduled Areas Ryotwari Settlement) Regulation, 1970 (for short, "Regulation II of 1970") has been made, the 3rd respondent-Settlement Officer, Eluru, has taken up *suo motu* enquiry under Section 9 of the Regulation II of 1970 and, by order dated 30.7.1977, rejected the claim of the 1st petitioner for a ryotiwari patta on the ground that he did not obtain permission of the Agent to the Government as required under the A.P. Scheduled Areas Land Transfer Regulation, 1959 (for short, "Regulation 1 of 1959") before purchasing the land in question. Aggrieved by the said order, the 1st petitioner preferred an Appeal before the 2nd respondent-Director of Settlements. The said Appeal was dismissed by order dated 18.12.1991 on the ground that no document was available to show the

continuous possession of the 1st petitioner over the land in question from the notified date till Regulation II of 1970 came into force. Challenging the said order, the 1st petitioner preferred a Second Appeal before the 1st respondent-Commissioner, Survey Settlement and Land Records, Andhra Pradesh, Hyderabad, which was also dismissed by order dated 30.8.1997. Hence, this writ petition.

I have heard the learned counsel for both the parties.

As could be seen from the material on record, the land in question was purchased by the father of the 1st petitioner under a registered sale deed dated 11.5.1942. The said fact has not been disputed by the respondents and as a matter of fact the 2nd respondent in his order dated 18.12.1991 recorded a finding that the land in question was sold for discharging a mortgage debt of the year 1933 and that the vendor of the 1st petitioner's father was in possession of the land even prior to 1933.

Admittedly, the 1st petitioner as well as the vendor under the registered sale deed dated 11.5.1942 are non-tribals. The ryotwari patta claimed by the 1st petitioner under the provisions of Regulation II of 1970 was rejected by the 3rd respondent-Settlement Officer on the ground that the sale transaction, which took place in the year 1942, was *null and void* under Regulation I of 1959.

It is to be noted that the transfer of immovable property situated in a scheduled area from one non-tribal to another non-tribal was prohibited by virtue of Regulation I of 1970 under which Section 3 of Regulation I of 1959 was amended. A Division Bench of this Court in **S. Venakta Ramanaiah v. the Deputy Collector (Tribal Welfare), Elwinpeta** (1976(2) APLJ 212) held that Regulation I of 1970 has no retrospective operation and the same view has been reiterated by a Full Bench of this Court in ***G. Narsa Reddy v. Collector, Adilabad District*** [AIR 1982 AP 1 (F.B.)].

Thus, it is clear that the Settlement Officer committed an error in

holding that the sale in favour of 1st petitioner's father under the sale deed dated 11.5.1942 was void.

Though the respondent No.2 held that the claim of 1st respondent for ryotwari patta cannot be rejected on that ground, the Appeal was dismissed holding that as per Section 7 of Regulation II of 1970, it is necessary to establish that the lands in the estate which have been taken over under the Estates Abolition Act have been continuously in occupation of the person claiming ryotwari patta from the notified date and since no document has been produced by the 1st petitioner to that effect, he cannot be granted a ryotwari patta. The said order of the 2nd respondent was confirmed by the 1st respondent.

Since, admittedly, Pydipaka village was a part of an estate which was taken over by the Government under the Estates Abolition Act, there can be no dispute that the first proviso to Section 7(1) of Regulation II of 1970 is applicable for grant of a ryotwari patta. A reading of the first proviso to Section 7(1) makes it clear that in the case of lands in the estate which have been taken over under the Estates Abolition Act, a person who would be entitled to a ryotwari patta under that Act shall be granted a patta if the lands have been continuously in the occupation of that person from the notified date. Hence, it is necessary for the petitioners to establish the fact that the land in question has been continuously in their occupation from the notified date i.e., 7.9.1949.

It is primarily contended by the learned counsel for the petitioners before this Court that the conclusion of the respondents 1 and 2 that the essential ingredient of the first proviso to Section 7(1) of Regulation II of 1970 has not been satisfied is factually incorrect. The learned counsel in support of her submission placed reliance upon an order passed by the Special Deputy Collector, Tribal Welfare, K.R. Puram, dated 25.6.1993 in S.R.Nos.376; 377 and 439 of 1985.

A perusal of the said order shows that eviction proceedings were

initiated by the Special Deputy Collector, Tribal Welfare, K.R. Puram, *suo motu* under Section 3(2)(a) of Regulation I of 1959, as amended by Regulation I of 1970, in respect of the lands in Pydipaka village on the allegation that the said lands were in possession and enjoyment of non-tribals in contravention of Section 3(1) of Regulation I of 1959, as amended by Regulation I of 1970. The said proceedings were contested by the respondents therein stating that they came into possession of the lands in question by virtue of a registered sale deed dated 27.6.1932. After due enquiry, the Special Deputy Collector recorded a finding that the lands in question never belonged to tribals at any point of time and that the sale transactions between non-tribals were not in contravention of the provisions of Regulation I of 1959 as amended by Regulation I of 1970.

It is contended by the learned counsel for the petitioners that in the said order a finding was also recorded that Ac.2.13 cents of land purchased by the 1st petitioner's father situated in R.S.No.118/3 of Pydipaka village continued in possession of the 1st petitioner's father. The learned counsel submitted that since the order of the Special Deputy Collector, Tribal Welfare dated 25.6.1993 could not be placed before the 2nd respondent, it was erroneously concluded that the 1st petitioner was not entitled for a ryotwari patta.

A copy of the order dated 25.6.1993 passed by the Special Deputy Collector, Tribal Welfare, K.R. Puram has been placed before this Court and on a perusal of the same I find force in the submission of the learned counsel for the petitioners that the matter requires reconsideration since apparently the land in Pydipaka village is the subject-matter of the said proceedings and some of the findings recorded by the Special Deputy Collector, Tribal Welfare appear to be in relation to the land claimed by the petitioners herein.

In the circumstances, to meet the ends of justice the order passed by the 1st respondent dated 30.8.1997 as well as the orders

passed by the respondent Nos.2 and 3 dated 18.12.1991 and 30.7.1977 respectively are hereby set aside and the writ petition is disposed of with a direction to the 3rd respondent to consider the claim of the petitioners for grant of a ryotwari patta under Section 7 of Regulation II of 1970, afresh and pass appropriate orders in accordance with law. No costs.

28.9.2007.

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.29050 OF 1997

28th September, 2007.

Between:

K. Manganna and others. .. Petitioners.

And

The Commissioner, Survey Settlement and
Land Records, Andhra Pradesh,
Hyderabad and others. .. Respondents.